



U.S. Department of Justice

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Subject:

Beazer East Entered CD

Special Instructions:

Destination Fax Number: 214-665-7330

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Date: 3/1/99

UNITED STATES COURTS
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF
FOR THE SOUTHERN DISTRICT OF TEXAS

NOV 04 1998

19

UNITED STATES of AMERICA,

Plaintiff,

v.

BEAZER EAST, INC.,

Defendant.

MICHAEL N. MILBY, CLERK OF COURT

Civil Action

No. H-90-2406

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

FEB 25 1999

NOTICE OF LODGING

Michael N. Milby, Clerk

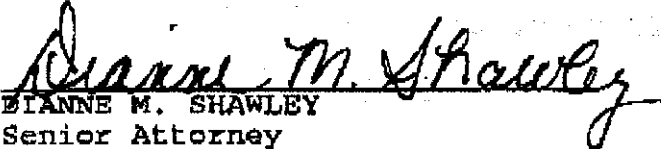
Pursuant to 28 C.F.R. Section 50.7, a proposed First Amendment to Consent Decree, a copy of which is attached hereto as Attachment "A", is being lodged with the Court in this civil action. After the requisite Federal Register Notice is published, the time period for comments has run, and the comments, if any, have been evaluated, the Court will be further advised as to any action which may be required by the Court at that time.

During the pendency of the public comment period no action is required of the Court. Following the expiration of the public comment period (30 days), the United States will file a Motion to Enter the Consent Decree with the Court. The Consent Decree should not be signed by the District Judge until the Motion to Enter is submitted.


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Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEAZER EAST, INC.

Defendant.

CIVIL ACTION NO.

H-90-2406

FIRST AMENDMENT TO CONSENT DECREE

I. Background

WHEREAS, the South Cavalcade Site (the "Site") is located in northeast Houston, Texas about one mile southwest of the intersection of Interstate Loop 610 and U.S. Route 59, in an area bounded by Cavalcade Street to the north, Collingsworth Street to the south, and the Missouri and Pacific railroad lines to the east and west;

WHEREAS, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the U.S. Environmental Protection Agency ("EPA") proposed the South Cavalcade Site be added to the National Priorities List (NPL) in October of 1984, and the Site was formally added to the NPL on June 10, 1986;

WHEREAS, on September 26, 1988, the Regional Administrator for Region 6 of the EPA executed a Record of Decision ("ROD") for the Site, selecting soil flushing and soil washing as the method of

remediating contaminated soils at the Site, and activated carbon adsorption as the method of remediating contaminated groundwater at the Site.

WHEREAS, the United States of America ("United States"), on behalf of the EPA, filed a Complaint in this matter pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607;

WHEREAS, on March 14, 1991, this Court entered a Consent Decree in this matter (the "Consent Decree") under which Beazer East, Inc. ("Beazer") agreed to reimburse response costs incurred by the EPA in connection with the Site and to implement the final plan for remedial action selected by EPA, embodied in the ROD;

WHEREAS, Beazer has performed and continues to perform the work required by the Consent Decree since it was entered by this Court;

WHEREAS, on or about February 10, 1997, EPA proposed to amend the ROD as it pertains to the soil portion of the remedial action for the Site (the "ROD Amendment"), without modifying the selected method for remediation of groundwater at the Site, to reflect a decision that placing a re-enforced concrete cap over contaminants at the Site is the most appropriate remediation for contaminated soils at the Site;

WHEREAS, in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), the EPA published notice of the proposed plan to amend the ROD in a major local newspaper of general circulation, and provided the public with an opportunity to submit written and oral comments on the proposed plan to amend the ROD;

WHEREAS, after considering all written and oral comments from the public concerning the proposed ROD Amendment, EPA determined that the proposed ROD Amendment is protective of human health and the environment, and EPA executed a final ROD Amendment on the remedial action to be implemented to address contaminated soils at the Site on June 27, 1997, on which the State of Texas has given its concurrence;

WHEREAS, Beazer and the United States have agreed to amend the above-referenced Consent Decree as set forth below, in order to implement the modified remedy for soils at the Site, set forth in the ROD Amendment, and have agreed that all other provisions of the Consent Decree, except those expressly modified herein, shall continue in full force and effect;

WHEREAS, Beazer and the United States have agreed that the proposed amendment to the Consent Decree will expedite cleanup of the Site and is fair, equitable and in the public interest;

NOW, THEREFORE, in accordance with Section XXVIII of the Consent Decree, it is hereby ORDERED, ADJUDGED, and DECREED, that the Consent Decree entered in this matter by this Court on March 14, 1991 is modified as follows:

II. General Provisions

1. EPA and Beazer agree to amend the Consent Decree (the "Amended Consent Decree"), such that Beazer will perform the remedy for contaminated soils at the Site in accordance with the ROD Amendment and attachments, collectively attached hereto as Appendix A, in order to achieve the objectives of the ROD Amendment of protecting human health and the environment.

2. Work, as discussed herein, shall mean all activities Beazer is required to perform under this Amended Consent Decree, including, but not limited to, Remedial Design, Remedial Action, and Operation and Maintenance, and reporting to EPA on those activities, in order to remediate contaminated soil at the Site in accordance with the ROD Amendment attached hereto as Appendix A.

3. Beazer agrees to finance and perform the Work in accordance with an Amended Statement of Work (the "SOW"), attached hereto as Appendix B, for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance for the remaining

remedial design, remedial action and operation and maintenance activities at the Site.

4. Beazer shall design a concrete cap in accordance with design criteria described in the ROD Amendment. This design will be incorporated into a Remedial Action Work Plan (RAWP) by reference, as set forth in paragraph 3(ii)(5)(d) of the SOW. Beazer shall include all approved RAWP revisions with the 100% design submittal.

5. Within twenty-one (21) days after the Amended Consent Decree is approved, Beazer shall submit a "Site Remediation Schedule" to the EPA project coordinator. The schedule format and content requirements are described in paragraphs 3(ii)(5) and 5(c) of the SOW. Subject to the Force Majeure and Dispute Resolution provisions of the Consent Decree, Beazer shall be subject to stipulated penalties as set forth in Section XXIV of the Consent Decree if it fails to perform the Work in accordance with the SOW. Beazer shall complete the remedy set forth in the ROD Amendment in accordance with the time frames specified in the Site Remediation Schedule.

6. In the event EPA determines that Beazer has failed to implement the Work in accordance with the this Amended Decree, the United States may perform such portions of the Work as it

determines may be necessary. At least forty-five (45) days prior to initiating such performance, the United States shall notify Beazer of its intent to do so and the basis of its determination. If Beazer disagrees with the United States' determination, it may, within thirty (30) days of receipt of the notice, invoke the dispute resolution provisions set forth in Section XXVI of the Consent Decree.

7. Except as provided in Sections XXV (Force Majeure) and XXVI (Dispute Resolution) of the Consent Decree, nothing in this Amended Consent Decree shall be deemed to limit any authority of the United States or this Court to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of Waste Material, as defined in the Consent Decree, on, at, or from the Site.

8. The United States will continue to incur costs at the Site after the entry of this Amended Consent Decree, for enforcement and response costs associated with the Site. Beazer shall reimburse the United States for all such costs incurred by the United States which are not inconsistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, as set forth in Section XX of the Consent Decree.

9. The United States and Beazer reaffirm Section XXI of the Consent Decree, which provides that, subject to the reservations contained in the aforementioned Section, each party covenants not to sue each other for claims arising from or relating to releases or threatened releases of hazardous substances from the Site which are addressed by the Work or cost reimbursement in the Consent Decree or this Amended Consent Decree.

10. Notwithstanding any other provision of the Consent Decree or this Amended Consent Decree, the United States reserves the right to: (1) take appropriate response or enforcement action in this proceeding; (2) institute a new action to seek additional removal or remedial measures at the Site beyond the scope of the Consent Decree or this Amended Consent Decree through an action to compel Beazer to perform removal or remedial work; or (3) institute an action to compel Beazer to reimburse the United States for response costs if:

a. For proceedings prior to EPA certification or completion of the Remedial Action:

1. Conditions at the Site, previously unknown to the United States are discovered after the entry of this Amended Consent Decree; or
2. Information is received, in whole or in part, after the date of the entry of this Amended Consent Decree, and these previously unknown conditions or this information indicates that the Remedial Action

is not protective of human health and the environment;

b. For proceedings subsequent to EPA certification of completion of the Remedial Action:

1. Conditions at the Site previously unknown to the United States are discovered after certification of completion by EPA, or
2. Information is received, in whole or in part, after the certification of completion by EPA and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

c. For purposes of this Section, those matters contained in or referred to in the ROD Amendment and the Administrative Record referenced therein shall be deemed to be conditions or information known to the United States.

11. Effective upon the approval of the Amended Consent Decree, and as long as this Amended Consent Decree remains in effect, Beazer shall submit Quarterly Progress reports to the EPA Project Coordinator no later than the second Thursday of February, May, August and November. The objectives and contents of the progress reports are described in paragraph 5(b) of the SOW, attached hereto as Appendix B.

12. Effective upon the approval of this Amended Consent Decree, and as long as it shall remain in effect, Beazer and EPA

shall conduct "Project Coordinators Meetings" in accordance with paragraph 5(d) of the SOW.

13. The Court finds and the parties agree that the Record of Decision, as amended, and the Work, as set forth in this Amended Consent Decree, the ROD Amendment, and SOW, are consistent with the National Contingency Plan, 40 C.F.R. Part 300, provided they have been fully approved by EPA.

14. Beazer acknowledges that nothing in this Amended Consent Decree constitutes a warranty or representation of any kind by the United States that compliance with this Amended Consent Decree will achieve the remedial objectives set forth in the ROD, as amended by the ROD Amendment. If compliance with this Amended Consent Decree does not achieve the remedial objectives of the ROD Amendment, the United States reserves its rights to institute new proceedings to seek performance of remedial action that will achieve the remedial objectives of the ROD, as amended.

15. The Site is presently owned by Western Way Holdings Company, Rex King and Marilyn Lee King, and American Warehouses, Inc. A copy of this Amended Consent Decree has been served upon all property owners of the Site, who will be provided 30 days from receipt to notify the undersigned if they do not approve of the proposed changes.

16. Except as specified in this Amended Consent Decree, the United States and Beazer intend that all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

17. EPA and Beazer may mutually agree in writing to modify the RAWP and schedules.

18. Beazer hereto stipulates and agrees that entry of this Amended Consent Decree is subject to the public comment requirements of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2).

So ORDERED, in accordance with the foregoing this 25th Day of

February, 1998⁹.


UNITED STATES DISTRICT JUDGE
Southern District of Texas

South Cavalcade Superfund Site
Consent Decree Amendment
Civil Action NO. H-90-2406

WE HEREBY CONSENT to the entry of this Amendment to Consent Decree FOR PLAINTIFF, UNITED STATES OF AMERICA,

Lois J. Schiffer
LOIS J. SCHIFFER

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Oct. 23, 1998
Dated

South Cavalcade Superfund Site
Consent Decree Amendment
Civil Action NO. H-90-2406


GORDON SPEIGHTS YOUNG
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910 Travis, Suite 1500

P.O. Box 61129

Houston, TX 77208

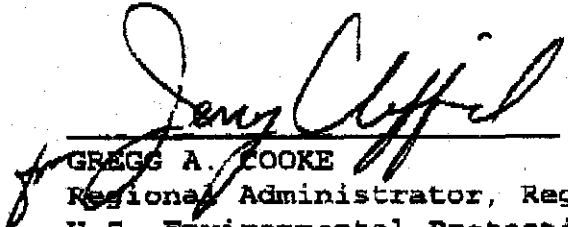
(713) 567-9501

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11-4-28

Dated

South Cavalcade Superfund Site
Consent Decree Amendment
Civil Action No. H-90-2406



GREGG A. COOKE

Regional Administrator, Region 6 (6RA)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

9/4/98
Dated

South Cavalcade Superfund Site
Consent Decree Amendment
Civil Action NO. E-90-2406

FOR DEFENDANT, BEAZER EAST, INC.


JILL BLUNDON

Vice President, General Counsel, and Secretary
Beazer East, Inc.
One Oxford Centre, Suite 3000
Pittsburgh, PA 15219

7-21-98
Dated

South Cavalcade Superfund Site
Consent Decree Amendment
Civil Action NO. H-90-2406

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

FEB 25 1999

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

BEAZER EAST, INC.,

Defendant.

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§

Michael N. Milby, Clerk

Civil Action No. H-90-2406

ORDER

Plaintiff United States' unopposed motion to enter amended consent decree is granted.

The Court will sign and enter the First Amendment to Consent Decree lodged on November 4, 1998.

Done this 25th day of February, 1999, at Houston, Texas.


SAM LAKE

United States District Judge